

Bond Case Briefs

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EMINENT DOMAIN - PENNSYLVANIA

In Re Mountaintop Area Joint Sanitary Authority

Commonwealth Court of Pennsylvania - July 12, 2017 - A.3d - 2017 WL 2960680

Landowner filed petition against sanitary authority for appointment of board of viewers, alleging de facto taking of landowner's property due to sewage overflow incidents.

The Court of Common Pleas overruled authority's preliminary objections and granted landowner's petition. Authority appealed.

The Commonwealth Court held that:

- Landowner was not limited in recourse to an action in trespass, and
- Easement period spanned from date of first overflow incident to date of last overflow incident.

Landowner was not limited in recourse to an action against sanitary authority in trespass, and could instead pursue de facto condemnation action under the Eminent Domain Code, after landowner's property was flooded with sewage on multiple occasions, where recurring sewage infiltration events resulted from manner in which authority chose to operate its system, and authority was aware of adverse consequences of decisions it made which caused overflows.

Easement period stemming from de facto taking of landowner's property by sanitary authority, due to sewage overflow events, spanned from date of first overflow incident to date of last overflow incident, even though overflow incidents occurred only occasionally during that period.